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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/008,579 | 11/08/2001 | Kenneth Merola | J&J-2066 | 6614 |

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EXAMINER

NGUYEN, MICHELLE P

ART UNIT PAPER NUMBER

2851

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/008,579

Applicant(s)

MEROLA ET AL.

Examiner

Michelle Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

DETAILED ACTION

Specification

1. The disclosure is objected to for the following reasons:
 - (a) The disclosure contains embedded hyperlinks and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlinks and/or other form of browser-executable code. See MPEP § 608.01.
 - (b) On Pg. 22, line 15, "camera 10" should be --camera 11--.Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 9, 10, 17 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9 and 10 recite the limitation "(i) filtering light emitted from a light source with a polarizing filter and (ii) not filtering the light entering the camera with a polarizing filter prior to such light entering said camera" in lines 2-6. It is understood from portion (i) that the skin to be imaged is illuminated with light which is filtered using a polarizing filter. It is further understood that the light entering the camera is the filtered light which illuminates the skin and is reflected off the skin to the camera. It is understood from portion (ii) that the light entering the camera is not filtered with a polarizing filter. Portion (ii) contradicts portion (i), thereby rendering the claims indefinite.

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Claims 17 and 21 include all limitations set forth in claim 10.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,836,872 to Kenet et al.

With regard to claim 1, Kenet et al. disclose a method of promoting a skin care product, the method comprising:

taking a standard (R-G-B colors) photograph of the skin of a person (see Col. 1, lines 11-6, Col. 9, lines 6-11, Col. 26, lines 18-21, 44-7);

taking at least one additional (ultraviolet) photograph of the skin of the person, the additional photograph selected from the group consisting of an ultraviolet photograph, a blue fluorescence photograph, and a polarized photograph (see Col. 1, lines 11-6, Col. 9, lines 6-11, Col. 26, lines 18-21, 44-7);

presenting (understood) the standard photograph and the at least one additional photograph to the person (see Col. 3, lines 25-30, Col. 26, lines 49-55; Here it is understood from the terms “choice or testing of cosmetics” and choice of a cosmetic” that the person is presented with the photographs in order to make choices relating to cosmetics to be used); and

suggesting skin care products based upon the person's review of the presented photographs (see Col. 3, lines 25-30, Col. 26, lines 49-55).

With regard to claim 2, Kenet et al. teach the method as discussed above with respect to claim 1 to further comprise presenting (understood) the person with one or more questions relating to the presented photographs, wherein the suggestion of skin care products is based upon the person's answers to said one or more questions (see Col. 26, lines 49-55; Here it is understood that the operator assists in the choice of a cosmetic. Therefore, it is further understood from the term "assist" that the operator and the person engage in an interactive discussion including questions and answers in order to make a choices relating to cosmetics to be used.)

With regard to claims 3 and 4, Kenet et al. teach the methods as discussed above with respect to claims 1 and 2, respectively, to comprise taking a polarized photograph (see Col. 5, line 47 to Col. 6, line 20, esp. Col. 6, lines 15-20).

With regard to claims 5 and 6, Kenet et al. teach the methods as discussed above with respect to claims 1 and 2, respectively, to comprise taking an ultraviolet photograph (see Col. 9, lines 6-11).

With regard to claims 7 and 8, Kenet et al. teach the methods as discussed above with respect to claims 3 and 4, respectively, to further comprise taking an ultraviolet photograph (see Col. 5, lines 47-53, Col. 6, lines 53-6, Col. 9, lines 6-11).

With regard to claims 9 and 10 as best understood, Kenet et al. teach the polarized photographs as discussed above with respect to claims 3 and 4, respectively, to be taken with a camera by filtering light emitted from a light source with a polarizing

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filter and not filtering the light entering the camera with a polarizing filter prior to such light entering the camera (see Col. 6, lines 3-20).

With regard to claims 11 and 12, Kenet et al. teach the ultraviolet photographs as discussed above with respect to claims 5 and 6, respectively, to be taken by filtering light emitted from a light source with an ultraviolet filter (see Col. 9, lines 6-11; Here it is understood that ultraviolet light includes ultraviolet A light).

With regard to claims 13 and 14, Kenet et al. teach the ultraviolet photographs as discussed above with respect to claims 7 and 8, respectively, to be taken by filtering light emitted from a light source with an ultraviolet filter (see Col. 5, lines 47-53, Col. 6, lines 53-6, Col. 9, lines 6-11; Here it is understood that ultraviolet light includes ultraviolet A light).

With regard to claims 15, 16, 17 and 18, Kenet et al. teach the standard photograph and at least one of the at least one additional photograph as discussed above with respect to claims 1, 2, 10 and 14, respectively, to be taken with a single digital camera (see Col. 4, lines 50-8, Col. 9, lines 11-20).

With regard to claims 19-22, Kenet et al. teach the standard photograph and the at least one additional photograph as discussed above with respect to claims 14-18, respectively, to be taken within a period of less than about 30 seconds (understood) (see Col. 11, lines 26-35; Here it is understood that the term "rapid succession" refers to a period of less than about 30 seconds).

Conclusion

6. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent No. 4,911,544 to Walsh;

U.S. Patent 4,842,523 to Bourdier et al.;

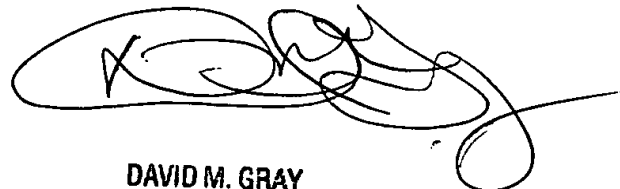
Japanese Publication No. 07-323014 (English translation provided); and

"Polarized Light Examination and Photography of the Skin" of Archives of Dermatology

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Nguyen whose telephone number is 703-305-2771. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams can be reached on 703-308-2847. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4900.

A handwritten signature in black ink, appearing to read 'D. Gray', with a large, stylized flourish extending from the end.

DAVID M. GRAY
PRIMARY EXAMINER

mpn
January 14, 2003